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INTELLECTUAL PROPERTY
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January 8, 2004

Commissioner for Patents
Box: 1450
Alexandria, VA 22313-1450

RE: APPLICATION OF HERZINGER TITLED: "METHOD FOR IMPROVING
PRECISION OF DATA ACQUIRED BY SPECTROPHOTOMETER SYSTEMS";
SERIAL NO.: 09/862,881
FILING DATE: 08/09/03
ART UNIT: 2851
EXAMINER: ESPLIN

RESPONSE TO REQUIREMENT OF ELECTION OF SPECIES

Dear Sir;

I am in response of a Restriction Requirement dated
12/24/03, regarding the identified Application.

Previously, with strong Traverse, Applicant Provisionally
Elected Claims 1, 39, 40 and 18 - 20 under Requirement of
Restriction dated 11/07/03 regarding the identified Application.
The Examiner has responded by requiring that Applicant either
clearly Admit on the record that the Figure Species are Obvious
Variants of each other and provide no Patentable distinctions, or
Select a Species with insight that the Examiner considers that
Claim 1 includes structure of the system in Fig. 4; Claim 18
includes structure of the system in Fig. 2; Claim 39 includes
structure of the system in Fig. 5; and Claim 40 includes
structure of the system in Fig. 6.

In response, it is believed that the Examiner's proposed correlations between Claims and Figures is purely exemplary and meant only to provide insight as to the sort of response the Applicant is being asked to provide, (and it is noted that there is no Examiner cited Fig. 6). For instance, Claim 1 provides a sequence of steps wherein an electromagnetic beam from a source is caused to enter a detector directly, then it is caused to interact with a sample and enter a detector and then again is caused to enter a detector directly. It is not understood how Fig. 4 most directly corresponds thereto. Fig. 4 demonstrates a system wherein a beam is split into two beams and there is simultaneous measurement of an electromagnetic beam entering a detector directly and interacting with a sample and entering a detector. In fact, Fig. 4 is the --least-- applicable Figure as regards Claims 1, 18-20, 39 and 40. Fig. 4 is most applicable to, for instance, Claim 2 wherein steps b and c1 are simultaneously practiced with two portions of a split beam.

Applicant believes that Figs. 1, 2, 3 and 5 most closely correspond to Claims 1, 18-20, 39 and 40 under the rational that Fig. 3 demonstrates collecting baseline data wherein a beam proceeds "straight-through" from a source to the detector, and Fig. 2 demonstrates collecting data where the beam from a source interacts with a sample before entering a detector. Fig. 1 includes a Monochromater to select single wavelengths in a beam provided by a source of electromagnetic radiation, and Fig. 2 provides a Dispersive element (DE) to enable simultaneous detection of multiple wavelengths, (at least one). Also, Figs. 1 & 2 show the beam of electromagnetic radiation interacts with a sample by transmission therethrough, so Fig. 5 is incorporated to demonstrate that reflective interaction with a sample is also within the scope of the Claims. Fig. 5 shows reflective interaction, and the Specification describes that transmissive

interaction is contemplated thereby via reducing the Angle (Θ) to zero, (see Specification Page 35, Lines 25-33). Figs. 1, 2 and 3 are best considered as specific variants contemplated by Fig. 5.

In light of the Foregoing explanation of what Figs. 1, 2, 3 and 5 show, Applicant, for the purposes of the present Examination, admits that Figs. 1, 2, 3 and 5 are Obvious invariants of one another and that Claims 1, 18-20 and 39 and 40 read thereupon. For the purposes of this Application Examination, in that Fig. 4 corresponds to Claim 2 which presently is not considered in this effort, Applicant provisionally elects that Fig. 4 is not to be considered as within the Species elected. Applicant reserves the right to request re-entry of Claim 2 and other similar Claims should a Generic Claim be found Patentable.

Sincerely,



JAMES D. WELCH

JW/hs